

PROPERTY

Diplomatic Missions

**Memorandum of Understanding
Between the
UNITED STATES OF AMERICA
and MONGOLIA**

Signed at Washington March 27, 1992

with

Attachments



NOTE BY THE DEPARTMENT OF STATE

Pursuant to Public Law 89—497, approved July 8, 1966
(80 Stat. 271; 1 U.S.C. 113)—

“ . . .the Treaties and Other International Acts Series issued under the authority of the Secretary of State shall be competent evidence . . . of the treaties, international agreements other than treaties, and proclamations by the President of such treaties and international agreements other than treaties, as the case may be, therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.”

MONGOLIA

Property: Diplomatic Missions

*Memorandum of understanding
Signed at Washington March 27, 1992;
Entered into force March 27, 1992.
With attachments.*

MEMORANDUM OF UNDERSTANDING
BETWEEN THE GOVERNMENT OF
THE UNITED STATES OF AMERICA
AND THE GOVERNMENT OF MONGOLIA
CONCERNING FACILITATION OF
THE WORK OF DIPLOMATIC MISSIONS

Whereas the Government of Mongolia desires to obtain at the present time and on a permanent basis a suitable property within the District of Columbia area for use as an Embassy and residential facilities, and has identified a suitable property for this purpose located at 2833 M Street, Northwest (also known as 201 29th Street, Northwest) in the District of Columbia, and more fully described in Attachment E, which meets with the approval of the Government of the United States, and

Whereas the Government of the United States desires to construct suitable permanent Chancery and residential facilities at a subsequent time, and has identified a suitable site for such facilities, located on the Selbe River in Ulaanbaatar, which meets with the approval of the Government of Mongolia,

The Government of the United States of America and the Government of Mongolia have agreed to the following arrangements:

1. The general principle governing the acquisition and lease of properties for Mongolian and U.S. diplomatic missions in their respective capitals shall be one of reciprocity.
2. As used in this agreement, the term "property" shall include land and any buildings or improvements thereon, except as is otherwise specifically noted.
3. The Government of the United States shall assist the Government of Mongolia in acquiring, as soon as possible, a suitable site for use as an embassy and residential facilities. It is understood that zoning laws and regulations are the responsibility of the local authorities and will not be subject to the direction of the Government of the United States. Accordingly, it shall be the responsibility of the Government of Mongolia to comply with such laws and regulations, to apply for and obtain any necessary zoning or related approval from the local authorities, and to retain local legal assistance for this purpose if necessary. The Government of the United States will render every appropriate assistance in such efforts. The Government of Mongolia may

purchase such property as soon as any necessary zoning approvals have been obtained. The Government of Mongolia will have the right to change or renovate buildings on such property or to construct new buildings, as permitted by and in accordance with local laws and regulations, subject to the agreement of the Government of the United States.

4. The Government of Mongolia shall assist the Government of the United States in locating and leasing suitable embassy and staff residential facilities in Ulaanbaatar on a temporary basis.

The Government of Mongolia shall further provide to the Government of the United States an unconditional option to lease, as appended hereto as Attachment A, a plot of land located in Ulaanbaatar, consisting of approximately 20,000 square meters, known as the Selbe River site, as more fully described in the official metes and bounds description attached hereto as Attachment B. The option shall remain in full force and effect for an initial term of five (5) years, and may be renewed for a second term of five (5) years, if the Government of the United States so desires. The option price shall be 30,000 U.S. dollars per year, payable annually in advance, throughout the option period.

The lease which is the subject matter of the option shall be for a term of ninety nine (99) years, with an option to renew the lease for a second term of ninety nine (99) years, in accordance with the terms and conditions of the lease attached hereto as attachment C. The lease price for the initial ninety nine (99) year term of the lease shall be 120,000 U.S. dollars per year.

The conditions pertaining to the site shall include certain guarantees, made by the Government of Mongolia, as described in Attachment D.

5. The Government of Mongolia will assist the Government of the United States in constructing secure new chancery facilities (including major renovations of existing structures) on such site by negotiating a mutually acceptable terms of construction agreement. It is anticipated that such an agreement would include provisions ensuring:

a. full and exclusive control by the Government of the United States of the construction site as well as of necessary temporary auxiliary support sites, which will be designated by mutual agreement, all of which shall be considered premises of the mission under the Vienna Convention on Diplomatic Relations from the time the Government of the United States takes control;

b. the use of United States design and construction firms for any or all phases of the project as determined by the Government of the United States, and the facilitation by the Government of Mongolia of such use;

c. the duty-free, prompt, and secure importation of United States equipment and materials for use in construction;

d. the work conducted on the construction sites should not jeopardize the safety of Mongolian citizens;

e. an expeditious design review, construction permit, and occupancy permit approval process which meets both the legitimate needs of the Government of Mongolia for necessary information and exterior inspections of the structure while preserving the necessary authority and control over the site of the Government of the United States; and

f. a cooperative working relationship between the parties regarding issues connected with construction, including, among other things, the provision of necessary visas for construction personnel, assistance in obtaining housing for such personnel, and other such matters.

In case the Government of Mongolia constructs its own Embassy and residential facilities in the United States, the above sub-paragraphs will also apply to Mongolia.

With reference to sub-paragraph c, it is understood that reasonable customs inspections and procedures may be required which do not unduly delay or threaten the security of importation, in accordance with the existing customs regulations in Mongolia and consistent with governing standards of international law including the protection afforded to diplomatic bags, including any requirement that a list of equipment and materials for importation should be forwarded in advance to the Mongolian authorities.

6. In the event that either Government wishes to purchase or otherwise acquire alternative or additional property, the other Government shall assist in locating a property or properties which the acquiring Government deems suitable and satisfactory in terms of price, location, and other relevant factors. The terms of acquisition of any such alternative or additional properties shall be consistent with the principle of reciprocity and with the framework and, insofar as possible, terms of this agreement.

7. In keeping with the principle of reciprocity, ownership by the Government of Mongolia of (describe property) shall be subject to the condition that the Government of the United

States may terminate the ownership and occupancy of such property by the Government of Mongolia, upon the giving of six months notice and refund of any funds expended by the Government of Mongolia for purchase or permanent improvements. Such condition, and no other condition, shall be included or imposed by the government of the United States in the record of title. Similarly, the Government of Mongolia shall be able to terminate the lease by the United States of the Selbe River Site upon the giving of six months notice and the refund of any funds expended by the Government of the United States for such lease, construction, or other permanent improvements. Such condition shall be included in the lease agreement. Upon termination, either Government shall be entitled to remove such buildings or improvements as it constructed or installed, and shall not be obligated to restore the property to its original condition.

8. The two Governments will implement in good faith the provisions of this Memorandum. Should any unforeseen matters arise, both Governments will settle it in a cooperative manner. In case of dispute over breach, implementation, or interpretation of this Memorandum, both Governments will consult with each other in the attempt to find a mutually acceptable solution.

9. The implementation of this agreement shall be subject to applicable law of the United States and Mongolia and to applicable international law. Embassies and residential facilities (permanent or temporary) on both sides will enjoy the full diplomatic privileges and immunities to which they are entitled under the Vienna Convention on Diplomatic Relations.

10. The provisions of this agreement are interdependent and indivisible, and the rights of each party are conditional upon the rights of the other. This Memorandum of understanding shall constitute the entire agreement between the parties and may be modified or amended only by mutual written agreement. Any part of this Memorandum of Understanding may be reviewed from time to time, at the request of either of the two sides, in light of changing circumstance.

11. This Memorandum has been negotiated by the parties in the English language. Subsequent to the execution of this Memorandum an authenticated Mongolian language version will be exchanged by diplomatic note. Both language versions shall be equally controlling.

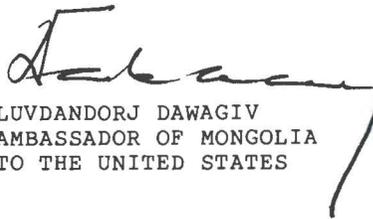
Executed this 27th day of March, 1992 at Washington, D.C.

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:



RICHARD H. SOLOMON
ASSISTANT SECRETARY FOR
EAST ASIAN AND PACIFIC
AFFAIRS

FOR THE GOVERNMENT OF MONGOLIA



LUVDANDORJ DAWAGIV
AMBASSADOR OF MONGOLIA
TO THE UNITED STATES

ATTACHMENT A

OPTION TO LEASE AGREEMENT

This Option to Lease Agreement, hereinafter "the Option, " is entered into this 27th day of March, in the year 1992, by and between the Secretary of State of the United States of America, hereinafter "the USA" acting by Richard H. Solomon, Assistant Secretary for East Asian and Pacific Affairs and the Government of Mongolia, hereinafter "the GOM", acting by Ambassador Luvsandorj Dawagiv.

The two Parties have agreed to enter into the following Option, as set forth in the following clauses:

1. The GOM declares that the Government of Mongolia is the owner of a parcel of land in Ulaanbaatar which has an area of approximately 20,000 square meters, as more fully described in the metes and bounds survey, appended hereto as Attachment B. Hereinafter, the parcel of land described in this Clause 1 shall be called "the Property."
2. In consideration of the payment set forth below in Clause 4 of this Option to Lease Agreement, the GOM grants to the USA the Option to lease the Property for a term of ninety nine (99) years, in accordance with the terms and conditions of the Land Lease appended hereto as Attachment C. This Option shall remain in effect from the date of its execution for a period of five (5) years. The USA may, at its election, extend this option for an additional five (5) year term, by giving notice in writing not later than six (6) months prior to the expiration of this first term.
3. If the USA elects to exercise its Option, it must do so by written notice stating that it is prepared to execute within seven calendar days the Land Lease appended as Attachment C to this Option and make the first annual payment therefore. Such notice shall be delivered to the Ministry of External Relations of the GOM. The GOM and the USA here expressly agree that the obligations of each Party toward the property and toward each other continue unchanged and unabated between the time of notice and the execution of the Land Lease.
4. The Option shall remain in full force and effect for an initial term of five (5) years, and may be renewed for a second term of five (5) years, if the USA so desires. The option price shall be 30,000 U.S. dollars per year, payable annually in advance, throughout the option period. The first payment of the option price shall be made within 60 days from the date of signature of the Memorandum of Understanding.

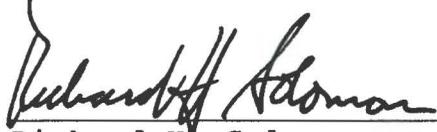
5. Any dispute, controversy, or claim between the Parties will be settled by negotiations between the Parties.

6. This Option shall be governed by and construed in accordance with applicable provisions of the laws of the GOM, the laws of the USA, and international law.

7. This Option has been established in the English language. Subsequent to the execution of this agreement, both English and Mongolian versions of the agreement will be exchanged by the parties. Both language versions shall be equally controlling.

8. This written Option constitutes the entire understanding of the Parties. Any changes, variations or modifications of the terms of this Option shall be valid unless made in writing and signed by both parties hereto. For the purposes of this clause 8, only the signature of a Contracting Officer shall be deemed valid and binding against the USA.

SECRETARY OF STATE OF THE
UNITED STATES OF AMERICA,
BY

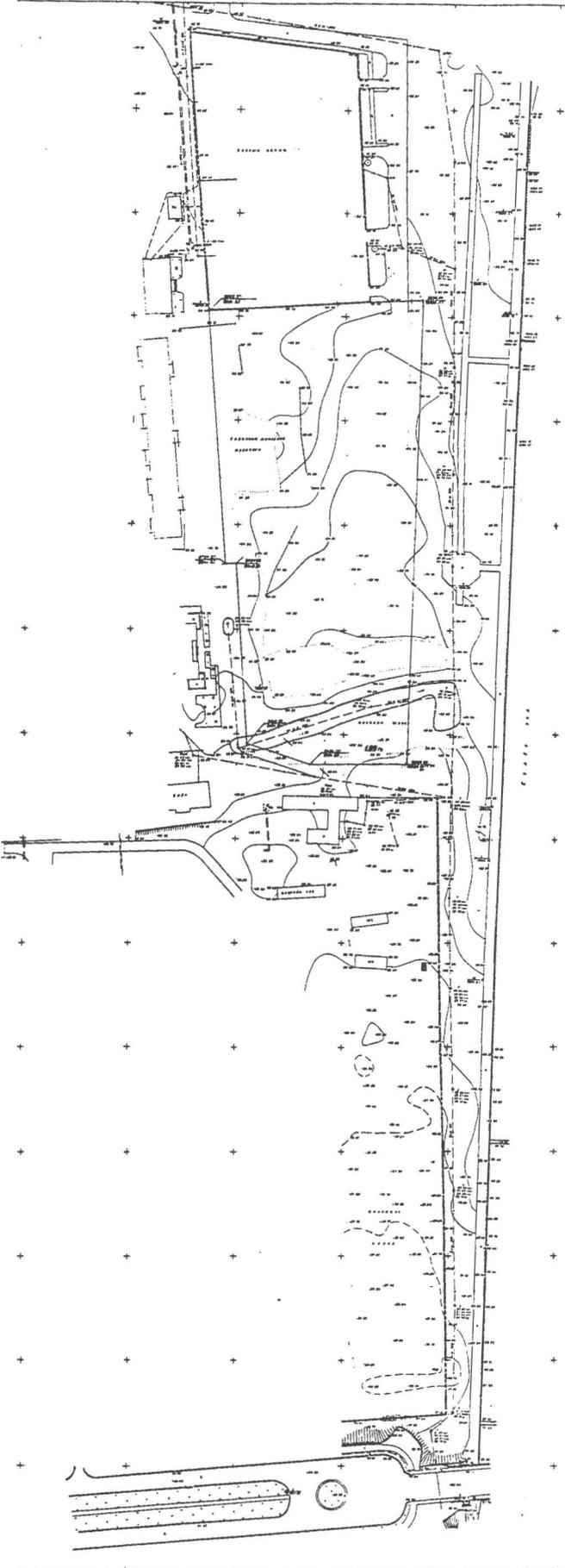


Richard H. Solomon
Assistant Secretary for East
Asian and Pacific Affairs

GOVERNMENT OF MONGOLIA
BY



Luvsandorj Dawagiv
Ambassador of Mongolia
to the United States



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ANALYSIS OF THE YALOW

LAND LEASE AGREEMENT

This Land Lease agreement is made and entered into this day of _____, 199 , by and between the Secretary of State of the United States of America, acting by _____, Ambassador of the Embassy of the United States of America in Ulaanbaatar, Mongolia, hereinafter "the USA, and

the Government of Mongolia, acting by _____, hereinafter "the GOM".

The Parties, for the consideration mentioned, covenant and agree as follows:

1. THE GOM hereby grants in lease to the USA the following described premises:

a plot of land free of any buildings and utilities, located in Ulaanbaatar, Mongolia, with an area of approximately 20,000 square meters, as more fully described in Attachment B;

to be used as a diplomatic establishment in Ulaanbaatar, Mongolia, and for such other diplomatic purposes as the USA may desire.

2. The GOM grants the full and sole use of the described premises in lease for a term of ninety nine (99) years, beginning on the date of the execution of this Land Lease and ending _____, 20 . The USA shall have the option of renewing this Land Lease on the same terms and conditions set forth herein (excepting only the payment amount), for a further period of ninety nine (99) years, upon giving notice in writing to the GOM within six (6) months prior to the termination date of this Land Lease as set forth above. The GOM will make every effort, in accordance with the existing legislation of the GOM, to grant the USA the permanent use of and/or title to the above mentioned site.

3. The USA shall pay the GOM annual rent, in advance, beginning upon execution of this Lease and annually thereafter on each anniversary of this Lease, in the amount of 120,000 U.S. dollars.

4. The described premises are and shall be exempt from any and all taxes, fees, and other charges, excepting only those that may be imposed for specific services, in accordance with the Vienna convention on Diplomatic Relations of 1961. The described premises shall become part of the premises of the diplomatic mission of the USA upon execution of this Land

Lease, and as such shall be immediately accorded all rights, privileges, and immunities under international law.

5. The GOM shall, during the term of this Land Lease and any extensions thereof, be completely and solely responsible for the installation, upgrading and maintenance of all infrastructure necessary to the described premises, including the initial provision of all roads, curbs, and sidewalks, services, electricity, water, telephone lines and sewage disposal, as requested by the USA.

6. The USA shall, during the term of this Land Lease and any extensions thereof, maintain the described premises in good and tenantable condition. The USA shall be completely and solely responsible for the expenses related to all initial hookups of services and all expenses relating to the provision of ongoing services, electricity, water, telephones, and sewage disposal it has requested.

7. The USA shall have the right, during the term of this Land Lease and any extensions thereof, at its own expense, to construct or erect buildings and other structures and/or additions on the described premises, including chancery facilities, recreational facilities and auxiliary residences, the title to which structures shall remain with the USA. All construction projects will be carried out in an unimpeded manner, and subject to conditions of construction to be negotiated between the parties prior to the beginning of construction. The GOM confirms that the USA may import into Mongolia materials, supplies and furnishings for its construction projects free of any customs duties and taxes. All construction by the USA on the described premises, shall be in compliance with the regulations and legislation of Mongolia, to the extent they are consistent with the USA's essential security interests. The GOM shall make available to the USA and/or its architects, engineers and other authorized agents, upon request, all current codes, plans and specifications for site preparation and development relating to the described premises. The USA also has the right, during the course of this Land Lease and any extensions, to make alterations, to attach fixtures and signs in or upon the described premises, and to affix a flagstaff, American flag, American seal, and office insignia on the described premises.

8. The USA has the right, at any time during the term of this Land Lease or any extensions thereof, to dismantle totally or partially all buildings and other improvements it may have constructed or erected on the described premises, or with the consent of the GOM, to sell all buildings and other improvements it may have constructed or erected on the described premises to any diplomatic mission or international organization accredited to the GOM, and to transfer all its rights and obligations under this Land Lease to the diplomatic mission or international organization. The GOM's consent shall not be unreasonably withheld.

9. Either Party may terminate this Lease by giving six (6) months advance notice in writing. In the event the GOM terminates this Lease, the GOM agrees to refund to the USA both all rents paid to the date of termination, and all Option amounts paid to the GOM prior to entering into this Lease, and further agrees to reimburse the USA for all costs it has expended for construction of facilities or other permanent improvements left on the site.

In the event the USA's interest has terminated for any reason, the Parties agree that no further charges of any kind, including rent, will thereafter accrue to the USA.

10. Any dispute, controversy, or claim between the Parties will be settled by negotiations between the Parties.

11. This Land Lease Agreement shall be governed by and construed in accordance with applicable provisions of the laws of the GOM, the laws of the USA, and international law.

12. This Land Lease has been established in both the Mongolian and English languages, in two copies each. Each Party shall receive both an English and Mongolian language version. Both language versions shall be equally controlling.

13. This written Land Lease Agreement constitutes the entire understanding of the Parties. Any changes, variations or modifications of the terms of this Lease shall not be valid unless made in writing and signed by both Parties hereto. For the purposes of this clause 13 only the signature of a Contracting Officer shall be deemed valid and binding as against the USA.

SECRETARY OF STATE OF THE
UNITED STATES OF AMERICA
BY

GOVERNMENT OF MONGOLIA
BY

ATTACHMENT D

CONDITIONS PERTAINING TO THE SITE

The conditions pertaining to the site of the Government of the United States of America (hereinafter "USA") shall include the following guarantees, made by the Government of Mongolia (hereinafter "GOM"):

1. A solely dedicated roadway shall be constructed and maintained by the GOM to provide two-lane vehicular access to the south-eastern corner of the site, directly from Sambuu Street. The final design of this roadway shall be agreeable to both the GOM and the USA. Construction of the roadway shall begin as soon as is reasonable after the lease has been initiated.
2. The heights of the buildings existing or under construction, as of April 1, 1990, shall be the maximum permissible heights for the entirety of each of the existing adjacent land parcels.
3. No utilities or utility accessways, existing or in the future, shall traverse the site, either on, above, or below the surface of the site. Any such utilities or utility accessways shall be removed by the GOM.
4. The GOM shall maintain a flood control program that will protect the occupants, buildings, and building contents from damage or endangerment and will ensure continuous beneficial occupancy of the site.
5. These guarantees shall apply for the duration of the use of the site by the USA. During the period when the option is in effect, no action or activity, on or adjacent to the site, shall be allowed by the GOM that would contravene these guarantees.

ATTACHMENT E

Lot numbered 196 in Square numbered 1212 in a subdivision made by Deanwood Development Corp. as per plat recorded in Liber 171 at folio 13 in the Office of the Surveyor for the District of Columbia.